

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

NATHANIEL MARCUS GANN,
Plaintiff,
v.
VALLEY STATE PRISON, et al.,
Defendants.

1:19-cv-01797-DAD-GSA (PC)

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL

(Document# 25)

On March 25, 2021, plaintiff filed a motion seeking the appointment of counsel. Plaintiff does not have a constitutional right to appointed counsel in this action, Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot require an attorney to represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court for the Southern District of Iowa, 490 U.S. 296, 298, 109 S.Ct. 1814, 1816 (1989). However, in certain exceptional circumstances the court may request the voluntary assistance of counsel pursuant to section § 1915(e)(1). Rand, 113 F.3d at 1525.

Without a reasonable method of securing and compensating counsel, the court will seek volunteer counsel only in the most serious and exceptional cases. In determining whether “exceptional circumstances” exist, the district court must evaluate both the likelihood of success of the merits [and] the ability of the [plaintiff] to articulate his claims *pro se* in light of the complexity of the legal issues involved.

1 The Court does not find the required exceptional circumstances. At this early stage in the
2 proceedings, the court cannot make a determination that Plaintiff is likely to succeed on the
3 merits. Plaintiff's First Amended Complaint was screened on March 11, 2021, and he was
4 granted leave to either proceed with First Amended Complaint or file a Second Amended
5 Complaint. To date, Plaintiff has not filed a Second Amended Complaint or notified the court he
6 is willing to proceed with the claims found cognizable by the court in the First Amended
7 Complaint. Thus, at this juncture, there is no complaint on record for which the court can
8 proceed. It is too early for service of process, and no other parties have yet appeared. Moreover,
9 based on the record in this case, the Court finds that Plaintiff can adequately articulate his claims
10 and respond to the Court's orders. Plaintiff is advised that he is not precluded from renewing the
11 motion for appointment of counsel at a later stage of the proceedings.

12 For the foregoing reasons, plaintiff's motion for the appointment of counsel is HEREBY
13 DENIED, without prejudice.

14
15 IT IS SO ORDERED.

16 Dated: March 31, 2021

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE